

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,215

)

Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a forty-one-year-old man with a high school education. His most recent steady work, from 1991 to February, 1994, was at a resort hotel, where he performed a variety of duties, including maintenance, kitchen work, and guest services.

The petitioner has had a longstanding problem with alcohol abuse. This led to his discharge from the hotel job last year, after which the petitioner sought treatment and made a sincere effort to turn his life around. In June, 1994, the petitioner worked for a few weeks for a painting contractor. He was forced to leave this job after his condition again deteriorated. Shortly thereafter, however, the petitioner enrolled in vocational rehabilitation and began receiving regular counseling for his problems. In April, 1995, the petitioner began working at a supermarket, where he is still employed.

The issue in this matter is whether the petitioner was disabled from February, 1994, when he lost the hotel job, until April, 1995, when he began successful employment at the supermarket. The hearing in this matter was continued several months to allow the petitioner to submit updated medical statements from his treating providers and evidence that his employment in the summer of 1994 was limited in terms of duration and pay.

The statements from the petitioner's treating psychologist indicate that the petitioner was unable to work from the time he began therapy in September, 1994, until April, 1995, when he returned to work. Unfortunately, however, the evidence submitted by the petitioner regarding his employment as a painter in the summer of 1994 shows that this work stint was too substantial for the petitioner to be considered to have been disabled throughout that period as well.

The employer's records show that the petitioner was paid \$3,240.00 during the summer of 1994. Although the petitioner states he does not think this is accurate, he was unable to submit any further substantiation of his earnings. Therefore, it must be concluded that the petitioner was engaged in "substantial gainful activity" as defined in the regulations (see infra) during the summer of 1994; and it cannot be found that the petitioner was disabled for any consecutive twelve month period during the time in question.

#### ORDER

The Department's decision is affirmed.

#### REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The regulations further provide that an individual who is engaged in substantial gainful activity cannot be considered disabled. 20 C.F.R. § 416.920(b). Work that pays more than \$300.00 a month is presumed to constitute substantial gainful activity. 20 C.F.R. § 416.974. In this case the evidence produced by the petitioner shows that he earned far in excess of this amount in the summer of 1994. Therefore, it cannot be concluded that the petitioner was disabled for twelve consecutive months between February, 1994, and April, 1995.

The hearing officer was impressed by the petitioner's candor and cooperativeness, and by the petitioner's obviously sincere commitment to address and control his drinking problem. Although it is unfortunate that the evidence did not turn out to support a favorable decision on the petitioner's claim for medicaid, the hearing officer wishes the petitioner well in his recovery.

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